



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable Wm. J. Tucker, Executive Secretary  
Game, Fish and Oyster Commission  
Austin, Texas

Dear Sir:

Opinion No. 0-6029

Re: Criminal liability of Rail-  
roads and Express Companies  
under Article 929 and Section  
1e of Article 901, Penal Code.

We have your letter requesting an opinion from this department on the above-captioned subject. The Articles of the Penal Code above referred to make it illegal to take, sell, offer for sale or to have in one's possession, certain species of fish, greater than or less than a specified size.

Specifically your question asks whether or not Article 929 and Section 1e of Article 901 apply to railroad and express companies having fish in their possession solely for the purpose of transportation from seller to purchaser and whether or not these statutes apply to sales by the railroad or express companies under Articles 900 to 904, inclusive, V. A. C. S.

At the outset, we feel constrained to direct your attention to this department's Opinion No. 0-2689, wherein we held that a corporation, as such, is not liable to criminal prosecution in this State. However, the officers of a corporation as well as every individual connected with the doing of the inhibited act, may be prosecuted.

The first part of your question, then, resolves to whether or not an agent or employee of a railroad or express company could be held criminally responsible for having in his possession, fish of an illegal size, where such agent or employee accepted the fish solely for the purpose of shipment from seller to purchaser.

There being no reported cases in point, resort must be had to analogous cases under facts not in legal effect different from those here obtaining.

The Supreme Court of Vermont in State v. Goss, 59 Vt. 266, 9 Atl. 829, said:

"If, then, in the absence of suspicious appearances or circumstances, an express carrier is neither bound to know nor authorized to find out, as a condition of receiving it, what a package contains that is offered to him for carriage, it would be strange to hold him guilty of a criminal offense because of the character of the contents; for in such case he is bound to carry, and liable if he does not, and the law will not compel a man to act, and then punish him for acting. Hence the turning point in this case is whether the respondent had reason to believe or suspect--for it appears that he did not know--that these packages contained what they did. If he did, he is charged with notice of their contents, and is guilty; if he did not, he is not charged with such notice and is not guilty."

The Court in this case relied, in part, upon the Nitro-Glycerin Case, 15 Wall. 524, wherein the Supreme Court of the United States held:

"It not, then, being his (the carrier's) duty to know the contents of any package offered to him for carriage, when there are no attendant circumstances awakening his suspicion as to their character, there can be no presumption of law that he had such knowledge in any particular case of that kind, and he cannot, accordingly, be charged, as a matter of law, with notice of the properties and character of packages thus received."

The Supreme Court of Illinois in construing a statute which made it unlawful to transport milk below a certain temperature held that it was impractical, if not impossible, for the railroad to ascertain the temperature of the milk and concluded, ". . . it must be held that the provisions here in question of this ordinance, so far as it applies to common carriers, is unreasonable and void."

In answer to the first part of your question, the carrier's agents and employees would not be liable in the absence of notice or knowledge of the illegal size of the fish. It is a well-settled principle of law that ignorance of the law is never a defense against a criminal act, but ignorance of any fact that is an essential part of the criminal act is always an excuse.

Honorable Wm. J. Tucker, page 3

If the circumstances are such as are reasonably calculated to arouse suspicion or inquiry with respect to the contents of any package offered for shipment, the carrier may rely upon the representations of the shipper as to the nature of its contents. 8 Tex. Jur., Section 30, p. 57. Should the shipper inform the carrier of the illegal size of the fish or if from attendant circumstances the agent knew or could have reasonably ascertained the illegal nature of the fish, then he would be liable for having in his possession fish of an illegal size. But this, only where the suspicious appearances or circumstances of the shipment would create a duty to inquiry or investigate. It has been held, and we think properly, that a carrier in the absence of suspicious appearances or circumstances, is neither presumed to know nor authorized to find out, as a condition of receiving it, whether the package offered contains articles it is forbidden to carry. Elliott on Railroads, Second Ed., Sec. 1414a, p. 39.

We take this opportunity, however, to caution you that the interpretation placed on these statutes by this department does not license railroads or express companies to transport illegal or contraband goods, and such illegal or contraband goods may be seized by the lawfully constituted authorities wherever found. 8 Tex. Jur., Sec. 154, p. 244. It is our purpose here only to point out the defense available to a carrier in the event of prosecution under the above-mentioned statutes.

In the second part of your question you ask whether or not these fish may be sold by the carrier when unclaimed at their destination. We think not. We have here held that the carrier is exempt from criminal liability where he has no notice or knowledge of the illegal nature of the goods accepted for shipment. However, in case of a sale by the carrier, he would have authority to open the packages and examine their contents and would be charged with knowledge of their illegal nature.

Trusting this fully answers your inquiry, we remain

Yours very truly,

ATTORNEY GENERAL OF TEXAS

Approved Oct. 2, 1944  
Carlos C. Ashley  
First Assistant  
Attorney General

By s. Benjamin Woodall  
Assistant

RD/JCP/dct

By s. Bob Donahue

Approved Opinion Committee By BWE, Chairman